

SENATE RECORD VOTE ANALYSIS

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2nd Session

Vote No. 101

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Page S-4493 Temp. Record

ILLEGAL IMMIGRATION/National Verification System, ID Requirements

SUBJECT: Immigration Control and Financial Responsibility Act of 1996 . . . S. 1664. Simon motion to table the Abraham amendment No. 3752 to the Dole (for Simpson) amendment No. 3743.

ACTION: MOTION TO TABLE AGREED TO, 54-46

SYNOPSIS: As reported, S. 1664, the Immigration Control and Financial Responsibility Act of 1996, will address the issue of illegal immigration: by increasing the number of Border Patrol and investigative personnel; by establishing pilot programs to improve the system used by employers to verify citizenship or work-authorized alien status; by increasing penalties for alien smuggling and document fraud; by reforming asylum, exclusion, and deportation laws and procedures; and by reducing the use of welfare by aliens.

The Dole (for Simpson) perfecting amendment to the bill would strike all after the first word and would insert the text of the bill, as amended, with one technical change.

The Abraham amendment would strike sections 111-115 and 118. Sections 111-115 will require the President to develop and to recommend to Congress within 3 years to 6 years the implementation of a national system for employers to verify that their employees are eligible to work in the United States and for welfare administrators to verify that welfare program participants are entitled to receive benefits. A national system will only be implemented if enacted in subsequent legislation. Regional pilot projects (projects will not be interstate projects) will be conducted to test various proposed systems. Data will be collected on the costs of those pilot projects to governments and employers. The President will be prohibited from testing or recommending a "national ID card," and any documents required in a recommended verification system will be resistant to tampering and counterfeiting. Any such documents, and this system, will not be used for purposes other than enforcing immigration laws and criminal laws relating to document fraud. Certain criminal and civil penalties will be established for misuse of the system's data. Employers will not be allowed to check a person's status until after hiring that person. An employer will be sanctioned for retaining a person whom the system lists as ineligible to work in America. Section 118 will set standards for birth certificates and drivers' licenses that will have to be met before Federal agencies or State agencies will be allowed to accept them as IDs. In addition, birth certificates will be rejected unless

(See other side)

YEAS (54)			NAYS (46)			NOT VOTING (0)	
Republicans (20 or 38%)	Democrats (34 or 72%)		Republicans (33 or 62%)	Democrats (13 or 28%)		Republicans (0)	Democrats (0)
Bond	Akaka	Johnston	Abraham	Inhofe	Baucus		
Brown	Biden	Kennedy	Ashcroft	Kassebaum	Breaux		
Campbell	Bingaman	Kerrey	Bennett	Kempthorne	Bumpers		
Chafee	Boxer	Kerry	Burns	Lott	Dorgan		
Cochran	Bradley	Kohl	Coats	Lugar	Feingold		
Cohen	Bryan	Lautenberg	Coverdell	Mack	Ford		
D'Amato	Byrd	Levin	Craig	McCain	Graham		
Dole	Conrad	Mikulski	DeWine	McConnell	Leahy		
Faircloth	Daschle	Moynihan	Domenici	Nickles	Lieberman		
Gorton	Dodd	Nunn	Frist	Pressler	Moseley-Braun		
Grassley	Exon	Pell	Gramm	Santorum	Murray		
Gregg	Feinstein	Pryor	Grams	Smith	Wellstone		
Jeffords	Glenn	Reid	Hatch	Snowe	Wyden		
Kyl	Harkin	Robb	Hatfield	Thomas			
Murkowski	Heflin	Rockefeller	Helms	Thompson			
Roth	Hollings	Sarbanes	Hutchison	Thurmond			
Shelby	Inouye	Simon		Warner			
Simpson							
Specter							
Stevens							

EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

SYMBOLS:

- AY—Announced Yea
- AN—Announced Nay
- PY—Paired Yea
- PN—Paired Nay

they are issued by a State or local government registrar. Standards for birth certificates include that they will have to be printed on safety paper, have the seal of the issuing agency, and have other features designed to limit tampering, counterfeiting, and use by imposters. Grants will be given to States to help them develop systems for matching birth and death records. Drivers' licenses will contain a Social Security account number (States that currently ask for Social Security numbers and verify them without putting them on licenses will be exempt from this requirement). Drivers' licenses will conform to Department of Transportation standards. The drivers' license requirements will be phased in over 6 years, starting October 1, 2000. The birth certificate standards will be developed within 1 year, and government agencies will accept only certificates meeting those standards 2 years after their development. Debate was limited by unanimous consent. Following debate, Senator Simon moved to table the Abraham amendment. Generally, those favoring the motion to table opposed the amendment; those opposing the motion to table favored the amendment.

Those favoring the motion to table contended:

The Abraham amendment would strike the most important provisions from this bill. The magnet that brings illegal aliens to America is employment. If they cannot get jobs, they will not come. On this point every Senator agrees. Senators part company, though, on the importance of being able to prove exactly who is an illegal alien. For our part, we do not believe that we will ever be able to control illegal immigration if employers have no reliable way of knowing who is allowed to be employed.

Our colleagues have expressed support for the other provisions in this bill, and, as the authors of those provisions, we naturally agree. However, those provisions are not enough. Putting more agents along the border will almost certainly reduce the number of people who manage to sneak across it, but it will not stop the flow. Further, only half of the illegal aliens who are now in America entered by sneaking across the border; the rest entered legally on temporary visas and then did not leave when they were supposed to. Similarly, making it easier to deport aliens will make it less likely that they will be able to use the current administrative nightmare to avoid deportation, but it will not significantly affect the desire of aliens to enter the country illegally. The worst that we can really threaten is deportation, and the aliens can then just try to enter again. For employers, we have had tough sanctions in place for 10 years, but those sanctions have not worked well.

The most important thing that we can do to stem illegal immigration is to make it easy to know who actually is an illegal alien. Many employers want to employ only Americans, but unless they discriminate against people who appear or sound foreign they have little way of accurately identifying who may be legally employed. Unfortunately, though it is illegal, it is very common in America to discriminate against people for seeming foreign for precisely this reason.

The specific complaints that our colleagues have raised against the provisions in this bill are without merit. For the national verification system, they have wrongly asserted that it would lead to a "national ID," that it would be expensive for businesses, and that it would lead to a large number of Americans being denied jobs when they were inaccurately identified as illegal aliens. On the first claim, we note that the bill specifically provides that any system that is developed will not be used as a national ID system. The only legal use for the system will be to verify employment. On the second claim, we note that businesses large and small have been very eager to sign up for pilot programs that have already been attempted. Those businesses were not relieved of their responsibility for complying with current Federal verification laws--they were willing to assume voluntarily both the costs of the existing verification laws plus the costs of the pilot programs. Experience has thus already shown that businesses are not worried about the costs of a national verification system. On the third claim, our colleagues have taken their 2-percent inaccuracy claim from a pilot project in California. Under that project, 1,100 employees were initially identified by the INS as being ineligible for employment. Those employees were told that they would have 30 days to challenge the INS's ruling. Only 22 actually did--the rest knew they were illegal aliens and did not bother to make a challenge. Of the 22 who did challenge the INS's ruling, 17 were found to have been improperly found to be illegal aliens. Those 17 workers, or 2 percent who were inaccurately identified, did not lose their jobs--the verification system applied after they were hired, and with a simple meeting with INS officials they were able to show that they were entitled to be employed in the United States. We see that pilot program as showing how well a verification program can work. No one, not one single person, who was entitled to be employed in the United States was dismissed.

Some of the statements we have heard against establishing a national verification system have been both inaccurate and overblown. For instance, some Senators have said that for the first time employers would need permission from the Federal Government before they could hire workers. The truth is that this bill will develop a system to require verification after, not before, employment, and that this system will only build upon current law. For the past 10 years employers have had to file I-9 forms to verify that their new-hires are entitled to work in the United States; that system is inaccurate. All we are trying to do with this bill is to develop an accurate system. Similarly, our colleagues have spoken ominously about using "biometric information." That term certainly sounds threatening, but any of our colleagues who has a driver's license is already carrying a card with biometric information, because driver's licenses have pictures, which are unique to individuals.

The complaints that we have heard against driver's license and birth certificate standards have either been corrected or are equally invalid. On the first score, the complaint that we were imposing an unfunded mandate was taken care of by stretching out the implementation dates. The costs are now too minimal to be covered by the unfunded mandates legislation. When these very minimal costs are compared against the benefits that States will receive under this bill from the lower burden that will be placed on public

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services by large numbers of illegal aliens, we think that the States have absolutely nothing about which to complain. An example of an invalid complaint that we have heard is that the Federal Government is infringing in an area that has traditionally been reserved for the States. Our colleagues are correct that this area has traditionally been reserved for the States, and it has been rightly reserved for the States, but due to changing circumstances it has now become an area in which the Federal Government has a duty to share responsibility. The Federal Government has the constitutional responsibility to control immigration, and in recent years it has had difficulty in stopping immigrants from coming to this country for jobs because it is so easy to obtain fraudulent driver's licenses and birth certificates. Driver's licenses and birth certificates will not be Federal documents--States will still have some discretion--they will only have to meet certain Federal standards that are needed for the Federal Government to exercise its responsibility to control the country's borders.

We share our colleagues' determination to prevent the development of a "Big Brother" government that spies on every move of ordinary, law-abiding citizens. Frankly, all Senators, and virtually all Americans, share that determination. Given this universal antipathy to government monitoring, we believe that it is impossible for the verification systems in this bill to be misused. We urge our colleagues not to be taken in by the fear of the impossible; we urge them to reject the Abraham amendment.

Those opposing the motion to table contended:

The personal identification provisions in this bill will do little to help stop illegal immigration and the hiring of illegal immigrants, but they will create enormous problems for law-abiding citizens and businesses. Agreeing to these provisions will impose tremendous unfunded mandates, will cause considerable inconvenience for virtually every American, and will seriously infringe on Americans' personal liberties. They should be stricken from this otherwise meritorious bill.

The Abraham amendment is comprised of two distinct, though related, sections that are intended to develop IDs that are less subject to fraudulent use to gain employment or welfare. Developing such IDs will do little if anything to stem illegal immigration. We have two reasons for holding this opinion. First, though statistics are hard to come by, we have spoken with INS officials and have been assured that most employers who hire illegal aliens do so deliberately. They want cheap labor, and they do not want to have to follow expensive regulations on workplace conditions. No matter how good an identification document is, it will not stop these employers. Second, we have little confidence that it will be possible to develop a document that cannot be forged or obtained illegally. The people who are now most expert in the information and format of IDs, and who will continue to be the most expert after the passage of this bill, are those people who have made illegal careers out of making fake IDs. They will still be able to get forgeries, and they will still be able to get legitimate IDs and have illegal aliens assume the identities of the people to whom those IDs really belong. Perhaps developing the ID systems contemplated by this bill will reduce illegal immigration slightly, but we think the other provisions in this bill will do much more.

To stop lawbreakers, steps need to be taken that target those lawbreakers specifically, which is the path that is taken by the other provisions in this bill. For instance, this bill will greatly increase the number of law-enforcement personnel along the border, it will impose substantial penalties on those illegal aliens who enter legally and then overstay their visas, it will greatly limit illegal aliens' access to public assistance, and it will make it much easier to deport illegal aliens. All of the other provisions are directed at the lawbreakers themselves. The ID provisions, though, apply to everybody. Less than 2 percent of the people in this country are illegal aliens, but the ID requirements will apply, and be harmful, to everyone.

The first ID section that would be stricken by the Abraham amendment will establish pilot projects for developing a national worker verification system. We urge Senators to consider the potential problems of ever implementing such a system, which is clearly the intent behind establishing pilot projects. There is a grave danger that any such system will develop into a national ID card. We know that this bill contains explicit statements that it will not result in Americans having to carry national identity cards wherever they go, and even though it will almost certainly not start out with that result, the development of an accurate ID system will make it likely. When people were first assigned Social Security numbers, Americans were assured that they would not be used for anything but the Social Security system--no one supposedly was going to use them to keep track of their activities or to in any other way use them. We all know how common it is to be asked to divulge our numbers now. If the ID system works, it will inexorably lead to more and more public and private asking for IDs from it.

For an ID system to be effective it is going to need some way of guaranteeing that the individual who claims an ID is in fact that individual. The only way to achieve that end is to use biometric information that is unique to each individual, such as voice imprinting or fingerprinting. The drafters of this bill obviously understand this fact, because they originally had a fingerprinting requirement. That requirement could result in an accurate system, but at what cost? To get at the 2 percent of the people in this country who are here illegally, should we really fingerprint everybody and establish a unique ID system that could be used to track all the activities of every law-abiding American? The fingerprinting requirement is no longer in the bill, but the development of such a system is not barred.

If a less accurate method is used, the results will be disastrous for those people who are mistakenly identified as ineligible to work in the United States. A pilot project that has already been tried by the INS in California resulted in a 2-percent error rate. If that 2-percent error rate is multiplied by the millions of people in this country who work, literally thousands of Americans who have every

right to work in America will find themselves unfairly barred from working by this system. Every time a database is developed by a government, the result is errors and interminable delays. For instance, the Social Security database, which is the best comparison for an equivalent national database, commonly makes mistakes, and it often takes months to correct those mistakes. The same will happen with the work-verification system.

Regardless of accuracy, any national identification system will prove extremely burdensome for businesses, especially small businesses. For every employee, every business will have to go to the Government and ask if he or she can be employed. If the system that is developed is a computer system, as it likely will be, they will have to invest in the appropriate computer and software technology, even if they only have a few employees.

The other section of the bill that would be stricken by the Abraham amendment would require State drivers' licenses and birth certificates to meet certain Federal standards. The purpose, again, is to make IDs that are less susceptible to forgery or being used by the wrong people. We have numerous problems with these provisions. First, they will cause considerable expense for State and local governments. We know that the modifications that have been made to phase in the requirements will reduce the burden, but it will still cost State and local governments millions of dollars to implement, and the Federal Government will not foot the bill. Second, it will cause tremendous hardship for millions of Americans. In a few years, the birth certificates that most Americans keep stashed away and have used for decades on the rare occasions that they have been needed will be useless. They will still be valid, but they will not be accepted by any government agency as IDs. For instance, when children turn 16 and go to the motor vehicles department to get their licenses, they will reach the front of the line and will be told that their old birth certificates are no longer acceptable. They will have to get new certificates. In many cases, that will require a personal appearance at the place the certificate was first issued, and, in our mobile society, that is going to involve a long trip for many Americans. The same sort of problem is going to arise when people go to get marriage licenses, apply to receive their Social Security benefits, or get into any other government line where they are going to be asked to present a birth certificate. If this provision is not stricken, we guarantee to our colleagues that they are going to hear endless justified complaints from their constituents. A third major problem with establishing standards for birth certificates is that it is quite difficult to prove from existing certificates to whom they actually belong. Illegal aliens will be able to ask for someone else's certificate, and the issuing agency, by looking at the first certificate, will not be able to tell if that person can have it because that original certificate will not have any of the improved identifying standards. Once those illegal aliens have the new, improved certificates, they will be able to get all the other new, improved IDs needed to get jobs.

A general, conservative principle that we have traditionally supported is that law enforcement efforts should be designed to catch and punish criminals. For instance, we do not favor restricting the right to keep and bear arms as a means of keeping criminals from getting guns. For the same reason, we should not favor the provisions in this bill that will burden citizens and businesses instead of keeping the focus on illegal aliens. We urge our colleagues to support the Abraham amendment to strike these provisions.